

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As below named inventors, we declare that:

Our residences, post office addresses and citizenships are as stated below next to our names.

We believe that we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled: **DYNAMIC BANDWIDTH ALLOCATION**; as amended by Preliminary Amendment, dated September 15, 1999, Amendment and Response, dated June 2, 2000, and Preliminary Amendment, dated December 4, 2000.

We have reviewed and understand the contents of the above-identified specification and amendments, including the claims.

We acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56 (see attached page 4).

We claim foreign priority benefits under 35 U.S.C. § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached

We claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)

We claim the benefit under 35 U.S.C. § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in Title 37 C.F.R. § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. or PCT Application Number	Filing Date (MM/DD/YYYY)	Patent No.
08/673,002	June 28, 1996	
08/650,408	May 20, 1996	
08/457,295	June 1, 1995	
08/384,659	February 6, 1995	
08/457,317	June 1, 1995	

As named inventors, we appoint the following registered practitioners to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith, with full right of substitution:

Name	Registration Number	Name	Registration Number
Fogg, David N.	Reg. No. 35,138	Polglaze, Daniel J.	Reg. No. 39,801
Leffert, Thomas W.	Reg. No. 40,697	Slifer, Russell D.	Reg. No. 39,838
Lundberg, Scott V.	Reg. No. 41,958	Walseth, Andrew C.	Reg. No. 43,234
Myrum, Tod A.	Reg. No. 42,922		

Please direct all correspondence in this case to:

Fogg, Slifer & Polglaze, P.A.
P.O. Box 581009, Minneapolis, MN 55458-1009
Telephone No. (612) 252-0014
Fax (612) 252-0019

We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor No. 1

Given Name (First and Middle [if any])		Family Name or Surname					
MICHAEL J.		GEILE					
Inventor's Signature						Date 5/25/01	
Residence: City	Batavia	State	OH	Country	USA	Citizenship	USA
Post Office Address	2215 Trappers Knoll Court						
City	Batavia	State	OH	Zip	45103	Country	USA

Inventor No. 2

Given Name (First and Middle [if any])		Family Name or Surname					
BRIAN D.		ANDERSON					
Inventor's Signature						Date	
Residence: City	Plymouth	State	MN	Country	USA	Citizenship	USA
Post Office Address	11430 - 50 th Place North						
City	Plymouth	State	MN	Zip	55442	Country	USA

Inventor No. 3

Given Name (First and Middle [if any])		Family Name or Surname					
JEFFREY		BREDE					
Inventor's Signature						Date	
Residence: City	Eden Prairie	State	MN	Country	USA	Citizenship	USA
Post Office Address	8073 Curtis Lane						
City	Eden Prairie	State	MN	Zip	55347	Country	USA

Inventor No. 4

Given Name (First and Middle [if any])		Family Name or Surname					
ROBERT J.		KIRSCHT					
Inventor's Signature						Date	
Residence: City	Savage	State	MN	Country	USA	Citizenship	USA
Post Office Address	13106 Vernon Avenue South						
City	Savage	State	MN	Zip	55378	Country	USA

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Post Office Address	2215 Trappers Knoll Court						
City	Batavia	State	OH	Zip	45103	Country	USA

Inventor No. 2

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BRIAN D.			ANDERSON				
Inventor's Signature					Date		
Residence: City	Plymouth	State	MN	Country	USA	Citizenship	USA
Post Office Address	11430 - 50 th Place North						
City	Plymouth	State	MN	Zip	55442	Country	USA

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JEFFREY			BREDE				
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Inventor No. 3

Given Name (First and Middle [if any])			Family Name or Surname				
JEFFREY			BREDE				
Inventor's Signature	<i>Jeffrey Brede</i>					Date	
Residence: City	Eden Prairie	State	MN	Country	USA	Citizenship	USA
Post Office Address	8073 Curtis Lane						
City	Eden Prairie	State	MN	Zip	55347	Country	USA

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Inventor's Signature						Date	
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Telephone No. (612) 252-0014
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Inventor No. 1

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Inventor's Signature						Date	
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Post Office Address	2215 Trappers Knoll Court						
City	Batavia	State	OH	Zip	45103	Country	USA

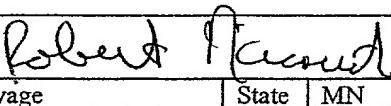
Inventor No. 2

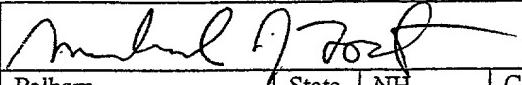
Given Name (First and Middle [if any])			Family Name or Surname				
BRIAN D.			ANDERSON				
Inventor's Signature						Date	
Residence: City	Plymouth	State	MN	Country	USA	Citizenship	USA
Post Office Address	11430 - 50 th Place North						
City	Plymouth	State	MN	Zip	55442	Country	USA

Inventor No. 3

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JEFFREY			BREDE				
Inventor's Signature						Date	
Residence: City	Eden Prairie	State	MN	Country	USA	Citizenship	USA
Post Office Address	8073 Curtis Lane						
City	Eden Prairie	State	MN	Zip	55347	Country	USA

Inventor No. 4

Given Name (First and Middle [if any])			Family Name or Surname				
ROBERT J.			KIRSCHT				
Inventor's Signature						Date 6/14/2001	
Residence: City	Savage	State	MN	Country	USA	Citizenship	USA
Post Office Address	13106 Vernon Avenue South						
City	Savage	State	MN	Zip	55378	Country	USA

Inventor No. 5							
Given Name (First and Middle [if any]) MICHAEL J.				Family Name or Surname FORT			
Inventor's Signature					Date	4/24/01	
Residence: City	Pelham	State	NH	Country	USA	Citizenship	USA
Post Office Address	5 Autumn Street						
City	Pelham	State	NH	Zip	03076	Country	USA

Inventor No. 6							
Given Name (First and Middle [if any]) MARK D.				Family Name or Surname ELPERS			
Inventor's Signature					Date		
Residence: City	Elk River	State	MN	Country	USA	Citizenship	USA
Post Office Address	16303 205 th Avenue NW						
City	Elk River	State	MN	Zip	55330	Country	USA

Inventor No. 5							
Given Name (First and Middle [if any])				Family Name or Surname			
MICHAEL J.				FORT			
Inventor's Signature					Date		
Residence: City	Pelham	State	NH	Country	USA	Citizenship	USA
Post Office Address	5 Autumn Street						
City	Pelham	State	NH	Zip	03076	Country	USA

Inventor No. 6							
Given Name (First and Middle [if any])				Family Name or Surname			
MARK D.				ELPERS			
Inventor's Signature					Date 4/23/01		
Residence: City	Elk River	State	MN	Country	USA	Citizenship	USA
Post Office Address	16303 205 th Avenue NW						
City	Elk River	State	MN	Zip	55330	Country	USA

U.S. PATENT AND TRADEMARK OFFICE

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) it refutes, or is inconsistent with, a position the applicant takes in:
 - (i) opposing an argument of unpatentability relied on by the Office, or
 - (ii) asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.